

MEETING RECORD

NAME OF GROUP: City Board of Zoning Appeals

DATE, TIME AND PLACE OF MEETING: Friday, May 20, 2005, 1:30 p.m., Hearing Chambers, County-City Building, 555 South 10th Street, Lincoln, Nebraska

**MEMBERS AND OTHERS
IN ATTENDANCE:**

Members: Gene Carroll, George Hancock, Gerry Krieser, Bob Kuzelka and Tom Wanser.
Others: Terry Kathe (Building & Safety), Tonya Skinner (City Law Dept.), Becky Horner and Michele Abendroth (Planning Dept.), applicants and other interested parties.

**STATED PURPOSE
OF THE MEETING:** Regular Meeting of the City Board of Zoning Appeals

Chair Carroll called the meeting to order at 1:30 p.m.

Approval of the minutes of the April 29, 2005 meeting

Wanser moved approval of the April 29, 2005 meeting minutes seconded by Hancock. Motion carried 5-0. Carroll, Hancock, Krieser, Kuzelka and Wanser voting 'yes'.

Appeal No. 05008 by Mark Clanton for a variance of the front yard setback on property generally located at 822 W. Leon Drive.

PUBLIC HEARING

May 20, 2005

Mark Clanton, owner of the property, began by stating that the work he has done was prior to finding out that his property is a double frontage lot. He does not believe the property is usual. It is a double frontage lot, which is defined as a lot on two non-intersecting streets. He does not consider Highway 34 to be a street. There is a considerable distance of 105 feet from his backyard property line and the Highway shoulder. He feels that the fact he is located on the edge of the city limits is unusual. There is also a considerable grade terrain change. He feels that aesthetically the proposed location is ideal. He then submitted letters from two neighbors in support of the variance. He also has a letter from LES which states they support the proposed location.

Kuzelka asked how he intends to access the building. Clanton stated there is access on the west side.

Becky Horner stated that the Planning Department received a letter in support of the variance.

Kuzelka asked if there is a mechanism to allow the setbacks for the entire set of lots to be changed from 10 feet to 20 feet. Horner replied that there is for community unit plans, but this is not one.

Carroll asked if there was further testimony in favor of or against this appeal. With no one appearing further, Carroll closed the hearing.

ACTION

May 20, 2005

Wanser moved to deny the application, seconded by Kuzelka. Wanser stated that there is not anything unusual about this property. Kuzelka added that it seems it would be setting off a chain reaction. Carroll stated that he agrees with the motion, as there are other opportunities to build on the property, and it does not meet the peculiar, unusual or exceptional circumstances.

Motion to deny carried 5-0. Carroll, Hancock, Krieser, Kuzelka and Wanser voting 'yes'.

Appeal No. 05009 by J. Michael Rierden for a variance of the side yard setback on property generally located at 3300 O Street and 110 N. 33rd Street

PUBLIC HEARING

May 20, 2005

Horner stated that the Planning Department received a letter in opposition and a letter in support of the application.

Mike Rierden, attorney on behalf of the applicant, B&J Partnership for Speedway Motors, presented to the record a packet of materials. He noted some differences in the site plan from when it was originally submitted to now, but it does not change the request. One change is that the cars are no longer stacked on the west side of the proposed building, because there is no stacking allowed in that front yard setback. The other thing that is different is the pick-up window is now on the north side.

Mr. Rierden stated that they appeared before the Hartley Neighborhood Association. They have the support of the Neighborhood Association and the abutting neighbor immediately to the north of the property.

In the Planning staff report, it is stated that moving the drive lane to the north would impact the valuations of the properties. They feel that what is there currently detracts from the values, and what they are proposing would enhance the values. The staff report also states that this application is inconsistent with the goals of the Comprehensive Plan. However, they feel it is consistent with the goals of the Comprehensive Plan and would serve the neighborhood well. In regard to the staff report suggesting to move the building, they have tried several locations but it is not feasible.

One unusual aspect of this lot is the tightness of the lot. The building is not usable as well. The other peculiar aspect is that 33rd Street is on a building line district.

Carroll asked if there was further testimony in favor of or against this appeal.

Wynn Hjermsstadt of the Urban Development Department stated that she is appearing on behalf of Urban Development in support of the applicant's request. Urban Development works with neighborhood associations. The Hartley Neighborhood Association has identified this corner as a concern causing a blighting occurrence. Normally Urban Development agrees with the Planning Department in regard to encroachment from commercial areas into residential areas. It is unusual for them to be here in this context. However, in this case, they support this application for several reasons. First, it meets the objective identified by the neighborhood association. There is also good screening. Lastly, they believe it is a good use for that neighborhood.

Carroll asked if there was further testimony in favor of or against this appeal.

Frank Delgado, 3325 P Street, which is directly north of this project, stated that he supports this proposal. Horner stated that due to the new site plan that was submitted today, Planning staff would indicate that the opening for serving customers facing the residential property to the north may be in violation of the code which indicates that the variance shall not impair the public health, safety, comfort, morals and welfare of the City of Lincoln.

Kuzelka asked if this property could be zoned B-3 which would reduce the setbacks. Horner stated it appears it may meet the intent of that district, but without a staff analysis, she does not know what the Planning Department recommendation would be.

Wanser asked if the rear yard could be used for parking as well as a drive-through. Terry Kathe stated that you are looking at stacking in the side yard, not in the rear yard.

Mike Rierden noted that the change of zone would be very difficult to achieve. He also added that the neighbors expressed a concern with the drive-through and they have changed the location, which the neighborhood supported.

Carroll asked if there was further testimony in favor of or against this appeal. With no one appearing further, Carroll closed the hearing.

ACTION

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Carroll moved to deny the application, seconded by Kuzelka. Carroll stated that there is nothing peculiar, unusual, or exceptional about the lot itself. There are other arrangements that the applicant can do to make it fit. This does not meet any of the guidelines that they are required to follow. Hancock stated they are not permitted to consider the arguments mentioned by Urban Development, the neighborhood association, the loss of parking, home values and zoning. The peculiar, unusual, exceptional circumstances have to be applied to the land, and it does not meet these qualifications. Wanser stated that he supports the project, but the zoning needs to be changed.

Motion to deny carried 5-0. Carroll, Hancock, Krieser, Kuzelka and Wanser voting 'yes'.

Appeal No. 2379 by Cameron Hill for a variance of the rear yard setback on property generally located at 3201 Arbor Road

ACTION

May 20, 2005

Horner noted that on May 9th she sent a letter to the applicant stating that action will be taken by the Board at the May meeting. She has since not heard anything from the applicant.

Wanser moved to deny the application, seconded by Hancock.

Motion to deny carried 5-0. Carroll, Hancock, Krieser, Kuzelka and Wanser voting 'yes'.

The meeting was adjourned at 2:08 p.m.